

Crisis, what Crisis? Some Views from Spain on the Recent Refugee Crisis in Europe

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The Spanish approach to the ongoing refugee crisis is certainly striking given the general lack of involvement and indifference with which the national government has addressed the issue. The same cannot be said of other subnational authorities (i.e. autonomous regions, municipalities, etc.) or the general public, who have been particularly active and eventually contributed to the mobilisation of the national government, thus modifying its initial attitude.

One should not find extraordinary this reluctance in addressing the problem of refugees, as it in fact reveals a remarkable continuity with the actions of previous governments, whatever their political colour. This undoubtedly constitutes quite a paradox: even if during its recent turbulent history Spain has been generating refugees in large numbers, with the establishment of democracy its attitude towards the notion of asylum revealed a striking lack of ambition.

Back in 1978 Spain expressed its consent to be bound by the Geneva Convention of 1951 and the New York Protocol of 1967 (it had not done so during the General Franco's dictatorship for obvious reasons). Having said that, the parallel drafting process of the Spanish Constitution of 1978 (still in force) brought a reluctant categorisation of asylum and refugee status. Indeed Section 13.4 of the Spanish Constitution merely introduces a reference to a future legislative instrument while at the same time it excludes asylum and refugee status from the catalogue of fundamental rights subject to *recurso de amparo* before the Constitutional Court^[1].

This initial reticence had a major impact in Law 5/1984 Regulating the Right of Asylum and Refugee Status, which only timidly addressed the concept of Refugee. It is true however that this unsatisfactory state of affairs has been partially alleviated by Law 12/2009 Regulating the Right of Asylum and Subsidiary Protection, which also transposes the relevant European directives. Even so, the situation is still far from acceptable as the asylum Directive from 2013 has not been transposed yet.

In addition, we should not forget that Spain faced a major migration crisis in 2006 (known as the "crisis of the canoes") with the arrival of more than 40.000 individuals to the Canary Islands. In this occasion, Spain bitterly complained about the lack of solidarity shown by other European Union Member States.

In this context, it cannot be a surprise that the ongoing immigration crisis in Europe has prompted conflicting positions in Spain. On the one hand, the central government, controlled by the conservative People's Party, could not hide its obvious lack of interest towards the unfolding tragedy. The conservatives' discomfort towards the idea of establishing quotas of "refugees" was clear early on in the process by their criticism of the original redistribution system proposed by the European Commission last May, arguing that Spain faced difficulties in accepting the proposal from the Commission. It could not be a surprise therefore that the worsening of the situation since last August and the subsequent new proposals by the Commission met with a conspicuous silence from the authorities in Madrid, accompanied by warnings by the Ministry of Interior regarding the threat to national security which might arise from the infiltration of jihadists amongst asylum seekers.

Against this background, in early September some major towns (Madrid, Barcelona, Valencia, etc.) and a number of autonomous communities governed by opposition political parties were advocating for the establishment of networks for hosting refugees and demanded the Central Government to accept the Commission proposal and adopt necessary measures to facilitate the transfer of "refugees" to Spain.

The wide impact of these initiatives in the Spanish public opinion forced the government to reluctantly state its willingness to accept such proposals, thereby initiating talks with the autonomous communities to facilitate its effective implementation^[2]. Notwithstanding this change, the conservative government insisted in the necessity to develop a more ambitious approach that should not only focus on the reception of "refugees", but also tackle fundamental issues, i.e. the resolution of the conflicts at the origin of the crisis- coupled with the adoption of

financial measures – the Prime Minister Mariano Rajoy even talked about the possibility of adopting a new "Marshall Plan" – that would allow a swift resolution of the core problems from which the crisis had derived.

This latter approach had more than a pinch of cynicism, given that since the beginning of its current term the conservative government had been systematically reducing the Spanish budget allocated for development cooperation, dwarfing it to levels well below those existing more than a decade ago.

The change in attitude of the government and the wave of solidarity shown in Spain cannot hide the fact that the country does have remarkable deficiencies when it comes to appropriately manage the quota of asylum seekers which may finally be allocated to Spain – between 17.000 and 20.000 individuals – should the Commission proposal be eventually adopted.

For this reason, it is no coincidence that until the beginning of this crisis the number of asylum seekers in Spain was strikingly small. This is indeed related to the absolute lack of information given by the Spanish authorities to potential petitioners. Leaving aside the practice of "hot expulsions" that the latest Public Safety Law has recently "legalized"[3], it is a fact that the asylum applications are mostly channelled through NGO-run centres, while only a handful are requested by people confined in publicly-owned centres for the Internment of Foreigners (CIEs).

Moreover, the processing of applications tends to last between one to three years, and results in most cases (more than the half at least) in a negative answer, therefore discouraging foreigners of applying in Spain.

Finally, we should highlight the sub-standard shelter conditions. The aforementioned CIEs indiscriminately gather asylum seekers and immigrants (mostly irregular awaiting deportation) in typically overcrowded and wretched facilities, which explains the numerous incidents taking place in these establishments and the continuous criticism raised by NGO against them[4].

[1] Without any doubt, this was related to the fact that the frail Spanish democracy was under constant terrorist threat, with a number of terrorists benefitting from refugee status in other countries. The problem was still present as late as in the 90s with Spain advocating for the suppression of the right of asylum between nationals of EU Member States (See Closa, C. (1998), "International Limits to National Claims in EU Constitutional Negotiations: The Spanish Government and the Asylum Right for EU Citizens", *International Negotiation*, (3:389). There was even a crisis between Spain and Belgium in 1996 because of the protection granted by the latter to members of the terrorist group ETA.

[2] We would like to stress that even if the number of foreigners in Spain exceeds 10%, and being immigration a relatively recent phenomenon, racist or xenophobic incidents are rare. Possibly related to this, no extreme political parties of significant relevance exist in Spain.

[3] See for more background the [collective report from Martínez Escamilla, M., et alii, "Rechazos en frontera ¿Frontera sin derechos?"](#), April 2015 (in spanish).

[4] Even rules governing CIEs has been partially annulled by Supreme Court in its Ruling of 10 February 2015.

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